THE HON'BLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA

THE HON'BLE DR. JUSTICE MOTILAL B. NAIK

THE HON'BLE SRI JUSTICE V. ESWARAIAH

THE HON'BLE SRI JUSTICE G. ROHINI

AND

THE HON'BLE SRI JUSTICE DALAVA SUBRAHMANYAM

WRIT PETITION Nos.11463, 11464, 11899, 12072, 12073, 12074, 12077, 12085, 12089, 12095, 12171, 12190, 12222, 12256, 12295, 12356, 12397, 12437, 12505, 12515, 12516, 12589, 12394, 12939, 13060, 13109, 13168, 13169, 13265, 13272, 13383, 13526, 13527, 13621, 13630, 13983, 14084, 14113, 14270, 14422, 14616, 14734, 14776, 15034, 15872, 16085, 16847, 16937, 17052, 17054, 17149, 17548, 17568, 17780, 18159, 18432, 18715, 18719, 19107, 19114, 19303, 19510, 19768, 20118, 20222, 20437, 20947, 23010, 23087, 23141, 23607, 25596 OF 2002, W.P.Nos.280, 337, 723, 1130, 1393 and 1403 OF 2003

Dated 05-02-2004

L.Royal Reddy and others … Petitioners

Vs

Government of A.P. rep. by its Principal Secretary

Transport Roads and Buildings (Tr.II)

Departments, Secretariat, Hyderabad

and others

Counsel for Petitioner : Mr.E.Manohar

Mr.P.Rajagopala Chary

Mr.S.R.Ashok

Counsel for Respondent : The Additional Advocate General for

Special Govt.Pleader for taxes.

JUDGMENT: (Per the **HON'BLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA, FOR SELF AND FOR MS. JUSTICE G. ROHINI AND SRI JUSTICE DALAVA SUBRAHMANYAM)**

***

Whether the decisions rendered by two Full Benches of this Court in **Y. PEDA VENKAIAH v. THE REGIONAL TRANSPORT OFFICER and in V. GOVINDARAJULU v. THE REGIONAL TRANSPORT OFFICER, ANANTAPUR** holding that under the scheme of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (A.P. Act No.5 of 1963), (hereinafter referred to as the "Taxation Act") the State is competent to collect the tax from the permit holders of stage carriage/contract carriage at higher rate for violation of the conditions of permit needs reconsideration in view of the later decision of the Supreme Court in **M. NARASIMHAIAH v. DEPUTY COMMISSIONER FOR TRANSPORT, BANGALORE** and the decision of another Full Bench of this Court in **KANAPALA RAMA RAO v. REGIONAL TRANSPORT OFFICER, SRIKAKULAM** is the question that arises for consideration in this batch of cases referred to for an authoritative pronouncement by the Larger Bench.

We have had the advantage of going through the opinion of Dr. Justice Motilal B. Naik and Brother Justice V. Eswaraiah in their separate draft judgments circulated.

Dr. Justice Motilal B. Naik in his separate Judgment has recorded his opinion that the earlier view taken by the two Full Benches of this Court in Peda **Venkaiah's** case and **Govindarajulu's** case cannot be held to be good law in view of the decision of the Supreme Court in **M. Narasimhaiah's** case and has approved the view taken by the Full Bench of this Court in **Rama Rao's** case (supra). He has proceeded to hold that the Motor Vehicles Act, Act 1988 (Central Act No.59 of 1988), (hereinafter referred to as "the M.V. Act") provides for issuance of permit under Section 87 or sub-section (8) of Section 88 of the said Act. The permits issued under the M.V. Act are subject to the conditions attached to the permits. If there is any violation of the conditions of the permit, appropriate authority is competent to take action under Sections 53, 192 and 192-A of the M.V. Act. The scheme underlined under the M.V. Act provides punishment and penalty for using the vehicle in

deviation of the conditions of permit, which includes cancellation of registration of the vehicle and prosecution of the permit holder. The State, therefore, cannot take recourse to levy additional tax or collect tax under Taxation Act at higher rate when there is violation of conditions of permit while using the vehicle, which is used either as stage carriage or contract carriage. Tax under the A.P.M.V. Taxation Act is compensatory in nature and not ex-proprietary. Tax cannot be levied as fine or penalty for contravention of permit conditions and as such penalty cannot be treated as part of recovery of compensatory tax. Brother Dr. Justice Motilkal B. Naik has opined that in **Peda Venkaiah's** case (supra), the Full Bench of this Court held that as soon as class of vehicle is changed, the rate of tax which applies to that class according to the notification is automatically attracted and there is no need for the Taxation Act to provide specifically that if there is a change in the class of vehicle, the authorities can levy tax afresh on that vehicle as belonging to that class. The power contained in Section 3 read with Section 4 of the Taxation Act is sufficient to enable the Government to levy tax from time to time when the class of the vehicles is changed. He further opined that the Full Bench decision in **Govindarajulu's** case reiterated the earlier view taken by the Full Bench in **Peda Venkaiah's** case. After analysing the judgment of the Supreme Court in **Narasimhaiah's** case and of the Full Bench in **K. Ramarao's** case, it was held that the view taken in the earlier two Full Bench decisions in **Peda Venkaiah's** case and **Govindaraluu's** case is no longer good law in view of the decision of the Supreme Court in **Narasimhaiah's** case.

Brother Justice Eswaraiah in his separate opinion has not agreed with the view taken by Brother Dr. Justice Motilal B. Naik and has held that the view expressed by the two Full Benches in **Peda Venkaiah's** case and **Govindarajulu's** case is still a good law. He has tried to distinguish the decision of the Supreme Court in **M. Nrasimhaiah's** case and has opined that in the said case neither usage of the vehicle was changed nor it was altered. The only allegation in the said case was that on two occasions there has been violation of the conditions of permit issued and since the vehicle had not been altered and the vehicle had been used only as a stage carriage for which stage carriage permit was granted and there was no provision to tax higher rate of tax for carrying the extra passengers in a stage carriage and being a stray case of overloading, additional tax under section 8 of the Karnataka Motor Vehicles Taxation Act was held not leviable. In his opinion, it cannot be said that the Supreme Court has taken a view, which goes contrary to the

view expressed by the Full Benches of this Court in **Peda Venkaiah's** case and **Govindarajulu**'s case. He has further opined that even in the later Full Bench decision of this Court in **Ramarao's** case the vehicle was having a town service stage carriage permit and deviation was made in the route for a day for one reason or the other. This act did not make the vehicle as having been plied without any permit and for that reason the Full Bench held that extra tax cannot be levied. The Full Bench further held that the liability to pay maximum rate of tax attaches itself to the vehicle the moment it plies on a route other than the one authorised by the permit or without obtaining any permit at all and the very fact that the vehicle deviated from the permitted route which is within the town service cannot empower the taxation authority to levy any tax treating it as a mofussil route other than the town service. Therefore, according to him, the said decision of the Full Bench in **Ramarao's** case has not taken a view which can be said to be contrary to the earlier two Full Bench decisions of this Court. V. Eswaraiah, J has opined that the earlier two Full Benches of this Court had gone on the usage of the vehicle but not on the actual permit. He came to the conclusion that tax is leviable based on usage of the vehicle and not on the actual permit. Tax will automatically attract as per usage of the vehicle. The amendment impugned in the Writ Petition has made only sub-classification in respect of the contract carriages used as stage carriages. In his view a stage carriage is a class by itself, therefore, it cannot be said that the said classification is not authorised either under the M.V. Act or under the Taxation Act or the rules made thereunder.

With due respect, we are unable to subscribe to the view expressed by V. Eswaraiah, J. While broadly agreeing with the view expressed by Dr. Motilal B. Naik, J in coming to his conclusions, we are giving our separate opinion.

We need not state the facts since the same have elaborately been stated in the two opinions circulated to us leading to the issuance of impugned notifications thereby amending the First Schedule of the Taxation Act, 1963.

In **Peda Venkaiah's** case two questions were raised for consideration by the Full bench. They are (1) whether the petitioner is entitled to the benefit of the concession in tax according to G.O.2401 and (2) whether the petitioner is not liable to pay penalty. With the permission of the Full Bench, the petitioner was permitted to raise a broader question that no tax at all can be demanded from the petitioner in addition

to what he had paid in the beginning of the quarter for a contract carriage. This question was permitted to be raised since in the writ petition the said question had been raised and it was urged that the A.P. Taxation Act and the rules made thereunder do not empower the authority to levy the difference of tax and penalty in the event of a contract carriage being used as a stage carriage and in such a case only proceedings under the Motor Vehicles Act 1939 can be resorted to. The Full Bench did proceed to analyse the charging section 3 as also Sections 4, 6, 7 and 9 of the Taxation Act and also Rules 3, 12 and 12-A of the A.P. Motor Vehicles Taxation Rules, 1963 and the First Schedule appended to the said Act and also noticed the facts of the case while considering the third question that at the beginning of the quarter the petitioner was using the vehicle as a contract carriage and had paid the tax on the footing that it was a contract carriage. Later on by the order impugned it was found that the petitioner was using the vehicle as a stage carriage and therefore he became liable to pay tax for the quarter on the footing that the vehicle was being used as a stage carriage. In that view of the matter, the Full Bench held that at the beginning of the quarter when the vehicle belongs to a particular class referred to in that notification, tax is levied on that footing and an entry is also made in the certificate of registration to that effect, but it does not follow that if the class of vehicle is changed during the quarter by reason of its use, tax can be levied according to the class to which the vehicle then belongs. As soon as the class of vehicle is changed, the rate of tax, which applies to that class according to the notification, is automatically attracted. There is no need for the Taxation Act to provide specifically that if there is a change in the class of vehicle, the authorities can levy tax afresh on that vehicle as belonging to that class. The power contained in Sections 3 and 4 of the Taxation Act was held to be sufficient to enable the Government to levy the tax from time to time when the class of the vehicle is changed. The Full Bench further held that the provisions of the Motor Vehicles Act have no application insofar as the levy of tax on motor vehicles is concerned. The levy, payment and recovery of tax are wholly governed by the Taxation Act. The mere absence of a specific provision in the Act empowering the authorities to levy tax on any vehicle as a stage carriage on which tax was paid earlier as contract carriage, does not make the levy of tax illegal. The provisions of the Act make it clear that the levy of tax is based on the nature of user of the vehicle. As the scheme of the Act is that the minimum period for which tax payable is a quarter where it is found that a particular vehicle has been used or kept for use as stage carriage even for a

day or a part of the quarter, it must be, for the purpose of the Act, held as a stage carriage liable for tax on that basis. The mere fact that tax is already paid as a contract carriage and the operator did not intend to use it as a stage carriage, would not in any way disentitle the authorities from levying tax on such a vehicle as stage carriage when it was used during the quarter as a stage carriage. This view of the Full bench was reiterated by the later Full Bench in **Govindarajulu's** case, which concurred with the reasons and conclusions of the Full Bench decision in **Peda Venkaiah's** case.

We may at this stage notice one important aspect. Both in **Peda Venkaiah's** case and **Govindrajulu's** case, the proviso to sub-section (2) of Section 3 of the Taxation Act, 1963 and Rule 5 of the Rules made thereunder were not at all noticed and considered. The charging provision being section 3 of the Taxation Act says that Government may by notification from time to time direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State and that notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied. But the proviso says that the rates of tax shall not exceed the maximum specified in Column (2) of the First Schedule in respect the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in Column (1) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres. Charging section nowhere authorises or deals with the situation where there is change in the category of the vehicle. Rule 5 of the Rules was substituted by G.O.Ms.No.430 TR & B (Tr.II) dated 25.11.1982 requiring filing of declaration when motor vehicle is altered. Elaborate procedure has been laid down to be followed for change of category of user of any vehicle. First Schedule appended to Taxation Act specifies the class of motor vehicles and maximum tax payable for quarter. Entry 4 deals with those motor vehicles plying for hire or used for transport of passengers in respect which permits have been issued under the Motor Vehicles Act specifying different rates for different classes of vehicles permitted to carry different number of passengers. Each sub-category uses the words "vehicle permitted to carry". Classes of vehicles are defined under the Motor Vehicles Act, which also deal with the grant of permit. Penalties are provided for various classes of vehicles in case vehicle is used whether without

permit or in violation of permit conditions. Change of vehicle is also dealt with under the provisions of the Motor Vehicles Act and the consequences, which have to follow. Rule 5 of the Rules which was substituted by G.O.Ms.No.430 dated 25.11.1982 reads as under:

> 5. Filing of declaration when motor vehicle is altered: (1) When in respect of any motor vehicle, additional amount of tax becomes payable, consequent to any alterations made to a motor vehicle or due to proposal involving increase either in the total distance permitted to be covered in a day in the case of stage carriage or the laden weight in the case of a goods vehicle or due to a proposal to change the category of use of vehicle, the registered owner of such vehicle or any other person having possession or control thereof shall file declaration in Form No.4 with the Licensing officer concerned together with certificate of registration and evidence of payment of additional amount of tax payable in respect of that vehicle. The additional amount of tax payable in respect of such vehicle for that quarter, half-year ort year shall bear the same proportion to the difference between the amount already paid and the amount payable at the higher rate for that quarter, half-year or year as the unexpired portion of the quarter, half-year or year bears to the quarter, half-year or year.
>
> Explanation: (i) For the purpose of calculation of the unexpired portion of the quarter, half-year or year, part of month shall be construed as a full month.
>
> (ii) The provision in this rule shall not apply to a case where the motor vehicle in respect of which a higher rate of tax or additional tax is payable has been used without the filing of declaration and payment of additional amount before such use.
>
> (iii) the rule shall not apply to a case where a motor car in respect of which lumpsum tax has been paid is misused as a goods vehicle, a motor cab or a stage carriage.
>
> (2) In respect of a motor vehicle of which lumpsum tax is paid under Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963, changed into another category attracting higher rate of tax or tax on quarterly basis, the tax payable for such a motor vehicle shall be the tax applicable to the new category with a [proportionate deduction at the rate of 2% per quarter or part thereof the lumpsum tax applicable to a new motor vehicle in the earlier category. This deduction of tax shall be applicable only till the expiry of a period of 12 years from the month of registration.

It was not disputed before us that Sections 52, 66, 84, 86 and 192-A of the Motor Vehicles Act exclusively deal with alteration in the motor vehicles, necessity for

permits, general conditions attaching to all permits, cancellation and suspension of permits in the eventuality of violation of the conditions, imposing of penalties and consequences of using vehicles without permits.

The Supreme Court in **Narasimhaiah's** case dealt with Section 8 of the Karnataka Motor Vehicles Taxation Act, 1957 in respect of motor vehicles which have been running as stage carriages under a permit issued under the Motor Vehicles Act, 1939 and on the question of levy of additional tax under section 8 of the Karnataka Taxation Act. Section 8 of the Karnataka Taxation Act read:

> When any motor vehicle in respect of which a tax has been paid is altered or proposed to be used in such a manner as to cause vehicle to become a vehicle in respect of which a higher rate of vehicle tax is payable, the registered owner or person who is in possession or control of such vehicle shall pay an additional tax of a sum which is equal to the difference between the tax already paid and the tax which is payable in respect of such vehicle for the period for which the higher rate of tax is payable in consequence of its being altered or so proposed to be use and the taxation authority shall not grant a fresh taxation car in respect of such vehicle so altered or proposed to be used until such amount of tax has been paid.

The Supreme Court held that the crucial words in Section 8 of the Act are "when any motor vehicle is altered or proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax payable". Thus according to the Supreme Court, the payment of additional tax arose only on two occasions. 1) when the motor vehicle is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable or (2) when any motor vehicle is proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which higher rate of tax is payable. In the said case, the Court found that the vehicle was only a stage carriage even when extra passengers were carried and there was no provision in the Karnataka Taxation Act which authorises or require a higher rate of tax to be paid in respect of a vehicle which is being used as a stage carriage on the basis of a larger number of passengers that are carried in it and consequently Supreme Court held that in the absence of any such provision in the charging section, higher tax could not be recovered when the vehicle was being used only as a stage carriage even there has been violation of the conditions of permit and extra passengers had been carried in the vehicle.

The Supreme Court held that the scope of the Karnataka Taxation Act and the scope of Motor Vehicles Act are different. The Motor Vehicles Act do provide for consequences in case there is violation of the terms of the conditions of permit. A person having obtained stage carriage permit exposes himself to penalties provided in the Motor Vehicles Act in case he violates the conditions of permit. In Karnataka Taxation Act, the charging provision Section 8 laid down the circumstances when liability to pay additional tax would have arisen ie "when any motor vehicle is altered or proposed to be used in such a manner as to cause the vehicle in respect of which a higher rate of tax is payable". The Supreme Court turned down the arguments on behalf of the State government that the liability of the registered owner to pay higher tax in respect of a stage carriage depends on the use of vehicle and number of passengers carried in a vehicle on a given date. The reason to turn down such submission was that in case such a submission is accepted, it would make the words "which the vehicle is permitted to carry" in item 4(2) to become meaningless and ineffective. The Supreme Court thus observed and held:

> It is no doubt true that it is not in the public interest that a registered owner of a motor vehicle should be allowed to carry more passengers than the maximum number of passengers that he is allowed to carry under his permit and such a tendency on the part of any registered owner should be checked. The fact, however, cannot be relied upon for the purpose of construing the items in Part A of the Schedule to the Act liberally and in favour of the State Government. It is needless to say that a law, which imposes a tax, should be construed strictly. If the action on the part of the registered owner is contrary to the provisions of the Motor Vehicles Act, 1939, there is sufficient provision in that Act to take appropriate action against him and either to cancel the permit or to suspend it.

Similar question had also come up for consideration before the Rajasthan High Court wherein more elaborate reasons were given by Division Bench of the Rajasthan High Court in **INDER KUMAR GOYAL AND OTHERS v. STATE OF RAJASTHAN.** In the said decision, Rajasthan High Court was considering similar provisions of Rajasthan Motor vehicles Taxation Act, 1951 and also the provisions of Motor Vehicles Act, 1939 and opined that the provisions of Rajasthan Taxation Act, 1951 do not deal with the acts relating to violation of permit or conditions of permit. Violation of permits granted under the Motor Vehicles Act or contravention of the provisions of the permit are dealt with under the Motor Vehicles Act. Specific provisions have been made in the Motor Vehicles Act to deal with the cases relating to contravention of the provisions of the Act and the conditions of permit and in that

background it was held that additional tax or special tax cannot be imposed for an act which is an offence under the provisions contained in Motor Vehicles Act and the State Legislature was not competent to impose tax or additional tax with reference to an act committed by a person which is treated as an offence under the Motor Vehicles Act.

The decision of the Rajasthan High Court was challenged before the Supreme Court. While the SLP was pending before the Supreme Court, amendment was carried out to Rajasthan Taxation Act. As such, the S.L.P. was dismissed and there was no occasion for the Supreme Court to consider on merits the decision of the Rajasthan High Court.

In our considered view neither Section 3 of the A.P. Motor Vehicles Taxation Act nor any other provisions of the said Act deal with cases relating to violation of conditions of permit. The Act nowhere provides that vehicle of a class or a category if used as a vehicle of other class or category can be subjected to higher tax, when such use is in contravention of the conditions of permit. It only refers to the class of vehicles as are defined under the Motor Vehicles Act and lays down that notification of the Government shall specify the class of vehicles on which the rates of tax shall be levied and the proviso says that rate of tax shall not exceed the maximum specified in Column (2) of the schedule. Charging section nowhere authorises levy of any additional tax whenever there is any violation of permit or conditions of permit. Unless the charging section authorises or permits levy of additional tax or charges, which is, a penalty the same cannot be treated as part of regulatory or compensatory tax. In case interpretation as is sought to be put forth on behalf of the Respondents and as was put forth in the two Full Bench decisions in **Peda Venkaiah's** case and **Govindarajulu's** case is accepted, on the same reasons as are given in **M. Nrasimhaiah's** case by the Supreme Court, the words 'in respect of vehicles permitted to" used in item 4 of the First Schedule to the Taxation Act would become meaningless and in effective. It has thus to be held that the two Full Benches of this Court which did not deal with the proviso to Section 3 of the Taxation Act, 1963, Rule 5 of the Taxation Rules and quoted words of item 4 of the First Schedule to Taxation Act are no longer good law in view of the ratio of the decision of the Supreme Court in M. **Narasimhaiah's** case.

Consequently, while concurring with the conclusions given in the opinion of Dr. Motilal B. Naik J, we are of the view that the Writ Petitions deserve to be allowed by declaring Para (1)(iii), Para (3) and explanation VI(iv) of para 5 of G.O.Ms.No.77, Transport, Roads & buildings (TR.II) Department dated 1.6.2002 to be invalid.

COMMON JUDGMENT; (PER DR. MOTILAL B. NAIK, J)

All these matters initially fell for consideration before a Division Bench of this Court. On-the basis of submissions made by the learned Senior Counsel appearing on behalf of the petitioners that in view of the

law laid down by the Supreme Court in M. NARASIMHAIAH Vs. DEPUTY COMMISSIONER FOR TRANSPORT, BANGALORE[1] and later decision of a Full Bench of this Court in KANAPALA RAMA RAO Vs. REGIONAL TRANSPORT OFFICER, SRIKAKULAM[2], which held that even if the motor vehicles are found to be plied in violation of conditions of

[1] **AIR 1988 SC 240**

[2] **2001 (6) ALD 402 (DB)**

permits, the State is not entitled to collect tax at higher rate and that the law laid down by the two Full Benches of this Court in Y. PEDA VENKAIAH Vs. THE REGIONAL TRANSPORT OFFICER, NELLORE[3] and in V. GOVINDARAJULU Vs. THE REGIONAL TRANSPORT OFFICER, ANANTAPUR[4] is no longer good law, the Division Bench faced some difficulty in declaring the decision of two Full Benches of this Court (3 and 4 supra) as no longer good law, and thought it fit to refer the matters to the Hon'ble the Chief Justice for constituting an appropriate Bench for rendering appropriate decision.

Basing on the referral order, dated 13.3.2003, the Hon'ble the Chief Justice is pleased to constitute a Larger Bench and thus these matters have fallen for consideration on various points raised on behalf of the petitioners and on behalf of the State.

Petitioners are the owners of contract carriages covered by inter-state, state-wide and district-wide permits and also owners of idle contract carriages not covered by regular permits but ply on the strength of temporary/special permits issued under Section 87 or subsection 8, of

Section 88 of the Motor Vehicles Act, 1988. Some of the petitioners are also holders of stage carriages covered by valid permits to ply on town service routes in various towns of the State of Andhra Pradesh.

[3]AIR1977A.P.227

4 AIR1986A.P.7

In this batch of Writ Petitions, the constitutional validity of amendments brought through G.O.Ms.No.77, R & B (TR.II) Department, dated 1-6-2002 amending certain provisions of G.O.Ms.No.152, dated 1-12-2001 is assailed on various grounds. A declaration is sought to declare Para (1) (iii), Para (3) and Explanation VI (iv) of Paragraph 5 of said G.O.Ms.No.77, Transport, Roads & Buildings (TR.II) Department, dated 1-6-2002 as illegal and void and pas such other order or orders in the circumstances of the case.

Leading the arguments on behalf of these Writ Petitioners, Sri E. Manohar, learned senior counsel submitted that most of the petitioners are owners of contract carriage vehicles covered by interstate, state-wide and district-wide permits and also owners of idle contract carriages not covered by regular permits but ply on the strength of temporary/special permits issued under Section 87 or subsection 8 of Section 88 of the M.V. Act. It is stated by the learned Senior Counsel that these permits are granted subject to the conditions attached to the permits and if there is any violation of permit conditions, respondents are entitled to initiate action under Section 86 of the M.V. Act against the permit, such as, suspension of the registration certificate under Section 53 of the M.V. Act against the vehicle and also entitled to launch prosecution under Section 192 and

Section 192-A of the M.V. Act against the person.

It is stated that the object of bringing amendments to G.O.Ms.No. 152 through the impugned G.O.Ms.No.77 dated 1-6-2002 is to initiate stringent action against such operators who allege to misuse the vehicle and cause loss of revenue to the State. According to the learned senior counsel, the Andhra Pradesh Motor Vehicles Taxation Act, 1963 provides for levy and collection of tax on every motor vehicle, which is used or kept for use. When vehicles are used

and contravene permit conditions, to meet such a contingency, no provision is made under the said Taxation Act to levy and collect additional tax on the alleged ground of violation of permit condition. However, it is only under the Motor Vehicles Act, 1988 sufficient provisions are made under Sections 86, 153, 192 and 192-A providing for cancellation, suspension of registration and also for prosecution. Thus, according to him any action taken by the Government in purported exercise of delegated power should be within the parameters provided under sub-sections (1) and (2) of Section 3 of the Taxation Act, 1963 and not otherwise. It is contended neither the Taxation Act, 1963 nor the First Schedule appended thereto provide for such a levy and collection of additional tax and as such the Government either has no jurisdiction or power under Section 3 of the Taxation Act to issue the impugned G.O. It is therefore, submitted that the impugned G.O. has to be declared as ultra-vires to Section 3 of the A.P. Motor Vehicles Taxation Act, 1963. In support of his contention, learned Senior Counsel cited the following decisions of the Supreme Court in M. NARASIMHAIAH'S case (1 supra), a Full

Bench decision of this Court in KANAPALA RAMA RAO's case (2 supra) and also a Bench decision of Rajasthan High Court in INDER KUMAR GOYAL AND OTHERS Vs. STATE OF RAJASTHAN[5].

It is nextly submitted that tax on motor vehicles is compensatory in nature and not expropriatory and as such tax cannot be levied as a fine or penalty for contravention of permit conditions and as such penalty cannot be treated as part of recovery or compensatory tax. It is also submitted that explanation provided to a statutory provision is only to explain the meaning and intendment of the Act but cannot be used for introducing a new element, which is not provided in the Act. The scheme of Taxation Act, 1963 suggest the levy of tax only on the basis of class of motor vehicles indicated in the First Schedule appended thereto and as such when a contract carriage is found plying in contravention of conditions of permit, such vehicles cannot be treated as vehicles plying without permit and on such basis tax cannot be levied as per paragraph 3(ii) and explanation VI (iv) of the impugned G.O.Ms.No.77 dated 1-6-2002. In support of this contention, learned senior counsel also placed reliance on the decision of Rajasthan High Court in INDER KUMAR's Case *(5* supra).

It is nextly submitted by learned senior counsel that introduction of a new slab of Rs.3500/- per seat per quarter for a

5 AIR 1992 Rajasthan 181

vehicle operating a total distance exceeding thousand kilo metres in a day as provided in paragraph 1 of the impugned G.O. is wholly illusory as according to him, no stage carriage or contract carriage vehicle can ply more than thousand kilo metres in a day and that not even a single vehicle in the entire State is permitted to ply more than thousand kilo metres in a day. Learned Senior Counsel therefore contended, though the impugned G.O. is issued under Section 3 of

the A.P. Motor Vehicles Taxation Act, 1963, as long as the First Schedule to the said Act is not amended, Government has no power to classify a vehicle, through the impugned G.O. under Section 3(2) of the Act. Counsel drew our attention to Sl.No.4 of column No. 1 of the First Schedule to the Motor Vehicles Taxation Act which refers to Motor Vehicles ply for hire or use for transport of passengers in respect of which permits have been issued under the Motor Vehicles Act, 1988. As long as the transport authority describe the vehicle as an express stage carriage as per rule 2(l)(b)(iii) of Motor Vehicle Rules and permit the vehicles to ply as express service as per clause 4(iv(a) of the First Schedule of the AP Motor Vehicles Taxation Act, no tax can be collected as an express stage carriage. Counsel contended that the taxing statute shall receive strict construction and no Court has the authority to interpret the legislature an intention, which is not clearly expressed in the language of the statute. In support of this contention, learned senior counsel cited a decision of the Supreme Court in

FEDERATION OF A.P. CHAMBERS OF COMMERCE & INDUSTRY Vs. STATE OF A.P.[6]

Referring to the two Full Bench decisions of this Court reported in Y. PEDA VENKAIAH Vs. THE REGIONAL TRANSPORT OFFICER,. NELLORE (3 supra), and in V. GOVINDARAJULU Vs. THE REGIONAL TRANSPORT OFFICER, ANANTAPUR (4 supra) learned Senior Counsel submitted in view of the law laid down by the Hon'ble Supreme Court in NARASIMHAIAH-s case (1 supra), the earlier view taken by the Full Bench of this Court may not hold' the field. Counsel also submitted that the later decision of Full Bench of this Court in KANALA RAMA RAO's case (2 supra) also clarifies the position holding if there has been violation of condition of permit granted to transporter in terms of provisions of M.V. Act, 1988, the same would attract penal provisions, by reason thereof no extra tax can be levied.

On behalf of the respondent-State Government, detailed counters have been filed, inter-alia, reiterating that the State is competent to issue the impugned G.O. Laying emphasis on the two earlier Full Bench decisions of this Court (3 and 4 supra), it is submitted by the learned Additional Advocate General that whenever a vehicle is found plying in deviation of permit conditions, the State is competent to levy higher rate of tax and collect the

same. In support

[6] **(2000) 6 Supreme Court** Cases 550

of this contention, learned Additional Advocate General drew our attentions to paragraphs 12 and 13 of the Full Bench decision of this Court in Y. PEDA VENKAIAH's case (3 supra) and paragraph 21 of V. GOVINDARAJULU's case (4 supra). Distinguishing the decision in M.NARASIMHAIAH's case (1 supra), which is cited on behalf of the petitioners, learned Additional Advocate General submitted that the question which fell for consideration before the Hon'ble Supreme Court in the said case was whether carrying five passengers more than the permitted capacity would attract tax at higher rate under Section 8 of the Act. It is in that context, the Supreme Court found that by carrying more passengers, nature of operation or the class of vehicle was not altered and higher tax on such irregularity is not permissible under the Taxation Act. According to him, the said conclusions were reached by the Supreme Court on a specific finding that even at the time of check, the class of vehicle was not altered and continued to be stage carriage vehicle. It is therefore stated, when there is no change or alteration of the vehicle, the Supreme Court under those circumstances, declared that no additional tax could be levied under Section 8 of the Act. It is submitted that facts obtaining in the instant Batch of Writ Petitions are not akin to the facts of that case and stated that the principle laid down by the Supreme Court in the said decision would not apply to the instant case and sought for dismissal of the writ petitions. Referring to Full Bench decision of this Court in KANAPALA RAMA RAO Vs. REGIONAL

TRANSPORT OFFICER, SRIKAKULAM (2 supra) learned Additional Advocate

General submitted that the vehicle involved had town service permit and was found plying on an unauthorized route and in that context the Full Bench held, no extra tax can be collected. Learned Additional Advocate General submitted that the facts involved in these cases are different and justified the action of the respondents . in issuing G.O.Ms.No.77, dated 1.6.2002.

We have also heard Sri S.R. Ashok, learned Senior Counsel appearing on behalf of few writ petitioners, who mostly supported the arguments advanced by Sri E. Manohar, learned Senior Counsel on behalf of other petitioners.

On the basis of these submissions, the point for consideration is whether the impugned G.O.Ms.No.77, Transport, Roads & Buildings (TR.II) Department, dated 1-6-2002 could be held as valid?

The Government of Andhra Pradesh issued the impugned notification in G.O.Ms.No.77 dated 1-6-2002 to take stringent action against such operators whose vehicles are found plying violating conditions of permits. The said G.O. introduced certain amendments to G.O.Ms.No. 152 dated 1-12-2001. Petitioners assail the following provisions of the impugned G.O.Ms.No.77 dated 1-6-2002 which are extracted as under:

Par a. I: In the said notification, in item 4 (v) (A) for items (i) and (ii), the following shall be substituted:-

(i)…

(ii)...

(ii) Exceeds 1000 Kms. Rs.3,500/-

Para 3: In the explanation III for item (ii), the following shall be substituted:-

(ii) In the case of a motor vehicle plying without a permit granted under Motor Vehicles Act, 1988, be reckoned, as above 1000 Kms.

Para 5: After Explanation V, the following shall be added:-

EXPLANATION-VI:

(i)…

(ii)...

(iii)...

(iv) Where contract carriages covered by Inter-State^ State-wide, District-wide permits and idle contract carriages are misused as Stage Carriages, tax at the rate of Rs. 3,5OO/- per seat per quarter shall be leviable.

The Andhra Pradesh Motor Vehicles Taxation Act, 1963 provides for levy and collection of tax on every motor vehicle, which is used or kept for use. All these petitioners obtained permits on payment of taxes as prescribed in the notification and plying their vehicles. While using their vehicles, petitioners are alleged to have

violated permit conditions. It is mainly contended on behalf of the petitioners that if a vehicle is found plying in violation of permit

conditions, the provisions of A.P. Motor Vehicles Taxation Act have no application as there is no provision in the said Act to take care of such a contingency and only the provisions of Motor Vehicles Act, 1988 are to be applied whenever vehicles are plying in violations of a condition of permit. •

Section 3 of the A.P. Motor Vehicle Taxation Act, 1963 is the charging section, which provides for levy of tax on motor vehicles in the following manner:

3(1): The Government may by notification from time to time, direct that tax shall be levied on every Motor Vehicle used or kept for use, in a Public Place in the State;

3(2) The notification issued under Sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied:

Provided that the rates of tax shall not exceed the maximum specified in Column (2) of the 'First Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in column(l) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres.

Section 4 of the Act provides that tax has to be paid in advance and thereafter licence has to be granted. Section 5(1)(b) of the Act provides for punishment by way of fine for non-display of the licence on the Motor Vehicle. Section 6 of the Act provides for penalty for failure to pay the tax.

Section 8 of the Act provides for seizure and detention of the Motor Vehicles in case of non-payment of tax. Section 9 of the Act provides for exemption, reduction or other

modification of tax. Section 17 of the Act empowers the Government to amend the schedules to the Act.

Admittedly, all the vehicles of the petitioners are used or kept for use and as such they are liable to pay tax as notified by the Government from time to time. It is not in dispute that the petitioners are paying the tax regularly as per the said notification. The Motor Vehicles Act, 1988 provides for issuance of permits under Section 87 or sub-section (8) of Section 88 of the Act. These permits are granted subject to the conditions attached to the permit. It is to be noticed if any condition of the permit is violated, the appropriate authority under the Motor Vehicles Act is competent to take action under Sections 53, 192[1] and 192-A of the Act. Section 53 provides for suspension of registration and sub-section (1) thereof, postulates thus:

Suspension of registration:- *(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction-*

(a) is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of this Act or of the rules made thereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such,

the authority may, after giving the owner an opportunity of making any representation, he may with to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle-

(i) in any case falling under clause (a), until the defects are

rectified to its satisfaction; and

(ii) in any case falling under clause (b), for a period not

exceeding four months.

Section 192 of the Motor Vehicles Act, 1988 provides for punishment and penalty for using the vehicle without registration. It lays down that *"whoever drives a motor vehicle or causes or*

allows a motor vehicle to be used in contravention of the provisions of Section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but 'shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both. Provided, that the Court may, for reasons to be recorded, impose a lesser punishment. "

Section 192-A is yet another provision which provides punishment for using the vehicle without permit. It lays down that *"whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of Section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or*

the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent

offence with imprisonment -which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both."

The provisions under Sections 53, 192 and 192-A of the Motor Vehicles Act, 1988 provide sufficient teeth to the authorities to

impose penalty and punishment if a vehicle is found to be used without registration and without permit or violation of permit conditions. In the instant case, the Government through the impugned G.O.Ms.No.77 dated 1-6-2002 amended certain provisions of G.O.Ms.No.152, dated 1-12-2001 proposing to take stringent action against those operators who are found plying the vehicles in violation of permit conditions and to collect tax at higher rate.

On an appraisal of submissions made for and on behalf of parties, I shall now proceed to examine the ratio laid down by two Full Benches of this Court in Peda Venkaiah's case and Govindarajulu's case (3 and 4 supra) and the later view taken by a Full Bench of this Court in Kanapala

Rama Rao's case (2 supra), the decision of the Hon'ble Supreme Court in M. Narasimhaiah's case (1 supra), the decision of the Rajasthan High Court in Inder Kumar's case (5 supra) and distinguish few observations made.

In the first decision relied upon by the learned Additional Advocate General in Peda Venkaiah's case (3 supra) the Full Bench of this Court held, "when a vehicle is registered as Contract Carriage and tax paid as such, vehicle used as Stage Carriage, authorities are empowered to levy tax on the footing that the vehicle was a Stage Carriage." The Full Bench further observed, "if at the beginning of the quarter, the vehicle belongs to a particular class referred to in notification under Sec.3, tax is levied on that footing and an entry is also made in the certificate of registration to that effect. But it does not follow that if the class of vehicle is changed during the quarter by reason of the use it was put to, tax cannot be levied according to the class to which the vehicle then belonged. As soon as the class of vehicle is changed, the rate of tax which applies to that class according to the notification is automatically attracted. There is no need for the Act to provide specifically that if there is a change in the class of vehicle, the authorities can levy tax afresh on that vehicle as belonging to that class. The power contained in Sec.3 read with Sec.4 is sufficient which enable the Government to levy tax from time to time when the class of the vehicle is changed." The second decision of the Full Bench of this Court relied upon by the learned Additional Advocate General in Govindarajulu's case (4 supra), the Full Bench reiterated the earlier view taken in Peda Venkaiah's case (3 supra).

However, a contra view has been taken by a later Full Bench of this Court in K, Rama Rao's case (2 supra). The learned Full Bench

was dealing with a vehicle plying on town service route with a permit, found deviation in the route. The learned Full Bench held, "even if deviation is found, no extra tax can be levied on the ground of

deviation made in the route when deviation was found in the town

service route." The Full Bench also observed, "tax can be levied in respect of a motor vehicle which has a permit and which does not have a permit. It is not in dispute that the vehicle of the petitioner was having a town service stage carriage permit. Only because a deviation has been made in the route for a day, for one reason or the other would not make the vehicle as having plied without any permit whatsoever. If there has been violation of conditions of permit granted to a transporter in terms of the provisions of the Motor Vehicles Act, 1988, the same would attract the penal provisions. By reason thereof, in our considered opinion, no extra tax can be levied."

At para 12 of the judgment, the Full Bench, referring to Explanation III, observed, "As noticed hereinbefore provides for levy of tax in relation to two classes of vehicles; vehicles having permit and vehicles not having any permit. Only because there is violation of the conditions of permit, thereby a vehicle having permit cannot be held to be liable to pay tax on par with a vehicle plying without any permit. Such approach, in our opinion, is not countenanced under the Act." The Full Bench while referring to other judgment submitted before it in S.V. RAMANAMMA Vs. ASST. TRANSPORT

COMMISSIONER[7] observed, "unfortunately, the purport and object

of Explanation III had not been placed before the Bench nor the scheme of the Taxation Act had been taken into consideration." Thus the Full Bench concluded, "petitioner plying his vehicle on a town service route having a permit, no extra tax can be levied on the ground of deviation made in the route."

A Division Bench of the Rajasthan High Court in Inder Kumar Goyal's case (5 supra) considering similar situation in a detailed discussion on the scope and ambit of the Taxation Act and the M.V. Act held, "Imposition of tax provided under Section 4B (3) for use of transport vehicle, without valid permit or use in contravention of the permit is found, is not a tax under Schedule 7 of List II of Entry 56 of the Constitution and as such Sec. 4B (3) is beyond the legislative competence of the State." The Division Bench further held, "There are two situations under which tax under S.4B (3) can be levied, the first is, where a transport vehicle is used without valid permit and the

second is, that where a transport vehicle is used in any manner not authorized by permit. Thus the provision does not impose taxes, but fine or penalty for an alleged offence of plying the vehicle without a valid permit or in contraventions of permit. Such a penalty cannot be treated as a part of regulatory or compensatory tax. Under Entry 56 of List II of VII Schedule of Constitution, tax can be imposed on goods and passengers carried by road or inland waterways. Such tax has to

[7] 1989(1) ALT 220

be compensatory or regulatory. It can be for the use of road and of the vehicle. Entry 56 of List II cannot however be interpreted to bring within its framework the imposition of tax for an act which is an offence. A person who is plying vehicle on road is liable to pay tax, surcharge and special road tax. Thus, irrespective of whether owner of vehicle is having a permit or not or whether he is plying the vehicle in contravention of the conditions of permit, the power vesting with the State Legislature in Entry 56 cannot be utilized for imposition of penalty in the form of tax. Therefore, S. 4B(3) is beyond the legislative competence of the State Legislature and is liable to be declared as ultra vires to the powers of the State Legislature."

Incidentally, during the course of hearing these writ petitions it is brought to our notice that the view taken by the Rajasthan High Court in Inderkumar Goyal's case (5 supra) was carried to the Hon'ble Supreme Court in Civil Appeal No. 10457 of 1995 and that during hearing of the Civil Appeal it was brought to the notice of the Hon'ble Supreme Court about the State Government introducing certain amendments by way of Rajasthan Finance Act, 1997 whereby Sec.4B(3) was repealed and Rule 4CC was made to give effect to the provisions contained in Sec.4B (3). The Hon'ble Supreme Court felt that in view of the. amendment brought by the Rajasthan State Legislature to certain provisions to the Rajasthan Motor Vehicles Act, the Civil Appeals are liable to be dismissed and accordingly dismissed the appeals.

In M. Narasimhaiah's case (1 supra) the Hon'ble Supreme Court was considering a contingency arising out of the Karnataka Motor Vehicles

Taxation Act (35 of 1957). The Hon'ble Supreme Court held, "levy of additional tax on the owner of a stage carriage being found carrying a few passengers in excess of the number which he was allowed to carry under the permit issued to him under the Motor Vehicles Act, on the ground that the owner had proposed to use the motor vehicle in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax was payable is not permissible. In such a case, a person who has obtained a stage carriage permit exposes himself to the cancellation of the permit itself under Sec.60 of the Motor Vehicles Act. Section 60 of the Motor Vehicles Act, 1939 empowers the Regional Transport Authority to cancel or suspend a permit for such period as it thinks fit on the breach of any of the conditions attached to the permit." The Hon'ble Supreme Court, while referring to Section 8 of the Act, further held, "When any motor vehicle is altered or proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the payment of additional tax arises, therefore, only on two occasions; (1) when the motor vehicle is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable; or (2) when any motor vehicle is proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable. In order to bring the case within the scope of Section 8 of the Act it

must be first shown that there is a provision in the Act which makes a stage carriage vehicle which carries a larger number of passengers than what is permitted under the permit issued in respect of it subject to a higher rate of tax. The higher rate of tax in respect of a stage carriage that

can be levied under the Act is incorporated in Cl.(2) of item 4. Sub-clause (a) of Cl.(2) of item 4 of the Schedule to the Act provides that for every passenger (other than the river and conductor) which the vehicle is permitted to carry, the registered owner is liable to pay Rs.160/- and for every passenger (other than the seated passenger, the driver and conductor) which the vehicle is permitted to carry has to pay Rs.45/- per passenger per quarter. In both the sub-clauses the liability of the registered owner is governed by the number of passengers that he is permitted to carry under the permit issued in his favour under the Motor Vehicles Act, 1939 and thus his liability is limited by the condition incorporated in the permit."

From the decisions referred to in support and against the writ petitioners by the learned Senior Counsel for the petitioners and the learned Additional Advocate General for the State of Andhra Pradesh it must be held that tax is levied on the basis of class of vehicles. Motor Vehicle tax is compensatory in nature and that any deviation or use of the vehicle would not attract additional tax unless statute itself provides a special category. There has been no alteration to the vehicle nor any special category is created in the schedule to levy and collect additional tax or surcharge or advance tax at higher rate. Tax

is to be levied as per the schedule fixed in terms of the classification of the vehicle being used.

Unfortunately, as discussed by me, I have not come across any provision in the Act providing payment of higher rate of tax when vehicles ply in deviation of permit conditions. As long as there is no alteration in such a manner as to cause the vehicle to become a vehicle in respect of which higher rate of tax is payable or proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, no additional tax could be collected on one ground or the other.

Looking to the facts of the case, through G.O.Ms.No.77, dated 1.6.2002 a new slab at Rs.3500/- per seat per quarter for a vehicle operating total distance 1000 kilo metres in a day is provided in para No.l of the impugned G.O. This new category as provided in para No.5 of clause (iv) of Explanation-VI is to the effect that where

contract carriages covered by Inter-State, State-wide, District-wide permits and idle contract carriages are misused as Stage Carriages, tax at the rate of Rs.3,500/- per seat per quarter shall be leviable. In para No.3 of Explanation III for item (ii) it is substituted, "in the case of a motor vehicle plying without a permit granted under Motor Vehicles Act, 1988, be reckoned, as above 1000 kilo metres." From the efforts made through the amending G.O.77, dated 1.6.2002, it would appear, as if a special category is created under the schedule for such vehicles,

which violate permit conditions, tax is to be collected at the rate of Rs.3,500/- per seat per quarter, as if the vehicles are plying without permit. I have discussed elaborately the provisions of Section 3 of the

M.V. Act, which provide for issuance of notification specifying class of vehicles on which, the rates for the period at which, and the date from which, the tax shall be levied. The maximum rate of tax to be levied is and provided in the First Schedule in respect of classes of motor vehicles fitted with pneumatic tyres state-wide in the corresponding Entry in col.No.I. Section 4 provides for payment of advance tax. Section 5 provides for punishment by way of fine for non-display of the license on the motor vehicle.

The M.V. Act, 1988 provides for issuance of permit under Section 87 or sub-section 8 of Section 88 of the Act. These permits are subject to the conditions attached to the permit. If there is any violation, appropriate authority under the M.V. Act is competent to take action under Sections 53, 192 and 192-A of the Act, the details of which have been discussed by me in the earlier paragraphs. It is not the case of respondents that these vehicles have no permit at all, which are found plying without valid permits. When vehicles are found plying in violation of permits issued under the M.V. Act, 1988, respondents are clothed with sufficient powers and shall be entitled to take action against such violators. It is to be reiterated that Motor

Vehicle tax is compensatory in nature and not ex-proprietary. Tax

levied as fine or penalty for contravention of permit cannot be

conditions and as such penalty cannot be treated as part of recovery of compensatory tax.

For all the reasons I am of the opinion that the view taken by the two Full Benches of this Court in Peda Venkaiah's case and in Govindarajulu's

case (3 and 4 supra) cannot be held to be good law in view of the decision of the Hon'ble Supreme Court in M. Narasimhaiah's case (1 supra).

In the result, all the writ petitions shall stand allowed. Consequently, I declare para (1) (iii), para (3) and Explanation-VI (iv) of para 5 of G.O.Ms.No.77, Transport, Roads & Buildings (TR.II) Department, dated 1.6.2002 are invalid. There shall be no order as to costs.

COMMOM ORDER: - (Per V.Eswaraiah, J)

I have perused the judgment prepared by my Brother Dr.Motilal B.Naik.J, but I respectfully disagree with the conclusions arrived at, and therefore, I would like to express my dissenting opinion as follows:

On a reference made by a Division Bench consisting of Hon'ble Dr.Justice Motilal B.Naik and Hon'ble Sri Justice R.Subhash Reddy to resolve the controversy arising out of the contest made by the petitioners to declare the law laid down by two Full Benches of this Court in y.peda venkaiah v. the

REGIONAL TRANSPORT OFFICER ([1]) and in V.GOVINDARAJULU Vs. THE REGIONAL TRANSPORT OFFICER, ANANTAPUR ([2]) is no

longer good law in view of the later decision of the Supreme Court in M.NARASIMHAIAH Vs. DEPUTY COMMISSIONER FOR TRANSPORT, BANGALORE ([3]) and also the decision of the Full Bench of this Court in-KANAPALA RAMA-RAO Vs. REGIONAL

[1](AIR1977AP227)

[2] (AIR 1986 AP 7)

[3] (AIR 1988 SC 240)

TRANSPORT OFFICER, SRIKAKULAM ([4]), these matters are placed before this Larger Bench. All these Writ Petitions are filed for declaring Paragraph 1 (iii), Paragraph 3 and Explanation VI (iv) of Paragraph 5 of G.O.Ms.No.77, Transport, Roads & Buildings (T.R.2) Department, dated 01/06/2002 as illegal and void. By the said Government Order, certain aments are introduced to the notification issued in G.O.Ms.No.152, Tr & B Department dated 01/12/2001 as follows:

AMENDMENT

1.In the said notification, in Item 4 (v) (A) for items (i) and (ii), the following shall be substituted:-

(i) Does not exceed 320 Kms Rs.1,092/-

(ii) Exceeds 320 Kms but does not exceed 1000 Kms Rs.1,442/-

(iii) Exceeds 1000 Kms Rs. 3,5007-

2

3.In the explanation III for Item (ii), the following shall be substituted:- >

(ii) In the case of a motor vehicle plying without a permit granted under Motor Vehicles Act, 1988, be reckoned, as above 1000 Kms. 4.....

5.After Explanation V, the following shall be added:-***Explanation-VI (i)....***

(ii)....

(iii).....

(iv) Where contract carriages covered by Inter-State, State-wide, District-wide permits and Idle Contract carriages are misused as Stage carriages, tax at the rate of Rs. 3,500/-per seat per quarter shall be leviable.

The interim orders are passed during the pendency of the Writ

Petitions directing that the responders are entitled to collect Rs.1,442/- per seat per quarter from the petitioners

instead of Rs.3,500/- per seat per quarter as proposed in the said G.O.Ms.No.77 dated 01/06/2002 as and when violation of the conditions of the permits are detected by the respondents in respect of the contract carriages of the petitioners.

The facts in nut-shell are as follows:- The petitioners are the transport operators in respect of the contract carriages covered by Inter-State, Statewide and Districtwide permits and the owners of idle contract carriages not covered by the regular permits but to ply on the strength of the special permits issued under Sections 87 or Section 88 (8) of the Motor Vehicles Act. The tax payable on idle contract carriages not covered by any permit plying on the strength of the special permits issued under Sections 87 or Section 88 (8) of the Motor Vehicles Act is Rs.1,150/- for every passenger per quarter. The tax payable for any contract carriage plying within the home district in any one contiguous district the tax payable per passenger per quarter is Rs.1,150/-; in respect of the contract carriages plying on the Intra-State routes for every passenger per quarter is Rs.2,500/-; in respect of the contract carriages covered by Ail India Tourist permits issued under Section 88 (9) of the Motor Vehicles Act for every passenger per quarter Rs.3,500/-. Some of the petitioners are only the idle contract carriage holders paid the tax @ Rs.1,150/- per seat per quarter. For example, in the first Writ Petition, petitioner Nos 2 and 8 have misused their idle contract carriages i.e., used them as stage carriages as alleged

in the show cause notices issued calling upon them as to why the difference of tax payable for the quarter ending in which they have used their idle contract carriages as stage carriages shall not be collected. The differential tax is sought to be collected as per the classification of its usage at Rs.3,500/~ per passenger per quarter. The differential tax payable by the 2nd petitioner in W.P.No. 11646/2002 is Rs.20,500/- and the 8th petitioner is Rs.21,180/-. The proceedings against them for collection of the differential tax are pending.

Sri E.Manohar and Sri S.R.Ashok, learned senior counsel appearing for the petitioners submitted that Section 3 of the A.P.Motor Vehicles Taxation Act (hereinafter referred to as Taxation Act'), is a general charging section which provides for the levy of tax on Motor Vehicles by the Government by issuing the notification from time to time directing payment of tax on every Motor Vehicle used or kept for use, in a public place in the State. The Notifications issued by the Government directing the payment of tax shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied.

As per Section 4 of the Taxation Act, tax shall be paid in advance in respect of either quarterly or half yearly or annually on a licence to be taken out for that period. Section 4 (4) provides for temporary licence for a period not exceeding 30 days. Section 4 (5) provides that no vehicle shall be used in any

public place in the State any time after issuance of the notification under

sub-section (1) of Section 3, unless a licence permitting its use during such period has been obtained as specified in Clause (a) of sub-section (1) or sub-section (4). The amendment issued revising rates of tax on motor vehicles in G.O.Ms.No.77 dated 01/06/2002 incorporating a new slab of tax in respect of such Stage Carriages plying on a distance exceeding 1000 Kms in a day and fixing the rate of tax at Rs.3,500/- per seat per quarter and the Explanation III is substituted to the effect that in the case of a motor vehicle plying without a permit granted under Motor Vehicles Act, be reckoned as above 1000 Kms and the Explanation VI (iv) which has been added in the notification to the effect that where contract carriages covered by Inter-State, State-wide, District-wide permits and Idle Contract Carriages are misused as Stage Carriages, tax at the rate of Rs.3,500/- per seat per quarter shall be levied, are illegal, ultra vires, arbitrary, violative of Articles 14 and 19 (1) (g) of the. Constitution of India and same are liable to be set aside.

The above amendments are attacked on the ground that there is no provision in the Taxation Act empowering the State to levy higher rate of tax on the ground of misuse and even assuming that such a power to levy higher rate of tax on the ground of misuse is there, the tax cannot be more than the tax prescribed to such use.

The impugned notification has been issued as a punitive measure and the said notification is not compensatory in nature as is evident from the circular memo of the Transport Commissioner dated 05/06/2002. The circular indicated that the said notification has been issued with a view to act as deterrent in respect of certain categories of the vehicles which are

misused as Stage Carriages, that a new slab with higher rate of tax Rs.3,500/- per seat per quarter is provided as maximum rate in the category of 'express stage carriage[1]. The said imposition is in substance a fine for the alleged offence of plying the vehicle without a valid permit or in contravention of the conditions of the permit and as such a penalty cannot, be treated as part of regulatory or compensatory tax and hence Explanation VI added to the said notification is ultra vires the powers conferred on the State Legislature under Entries 56 and 57, List II of the VII Schedule of the Constitution of India. It is further contended that by the amendment a new slab of Rs.3,500/- per seat per quarter for the vehicles operating for a total distance exceeding 1000 Kms in a day is introduced and Item II of Explanation III is substituted stating that in the case of motor vehicles plying without a permit under Motor Vehicles Act, the distance be reckoned as above 1000 Kms and similarly Explanation VI has been added to impose higher tax in respect of the motor cabs/motor cars, maxi cabs misused as Stage Carriages and if the Contract Carriages are misused as Stage

Carriages, the tax is sought to be levied as 'Express Stage Carriages' operating for a distance 1000 Kms in a day and there is no single permit authorizing vehicles to ply a distance exceeding 1000 Kms in a day and, therefore, the higher rate of tax sought to be collected for the misuse of the contract carriage as stage carriage is illegal, arbitrary and the said tax is not regulatory/compensatory in nature but it is a penalty.

On the other hand, Sri D.Prakash Reddy, learned Additional Advocate General, appearing for the State submits that the gross misuse of the vehicles by the operators causing heavy loss of revenue to the

State, which necessitated the present impugned amendment. The amendments are brought as a step to take stringent action against the operators who misuse the vehicles and cause loss of legitimate revenue to the State. By virtue of the amendment, the State classified the vehicles, which are being misused as a class by itself and higher rate of tax is prescribed. Similar deemed explanations prescribing higher rate of tax were very much there in all previous notifications issued under Section 3 of the Taxation Act. The contentions of the petitioners that the State Government has no power to levy tax at the rate of Rs.3,5007-per seat per quarter is baseless as the State has got power to levy the tax on motor vehicles at such rates depending on the class of vehicles and nature of use of the said vehicles. Since the First Schedule of the Taxation Act prescribes the maximum

rate of tax at Rs.4,000/- per seat per quarter in item 4 (iv) (a), prescribing tax at Rs.3,500/- per seat per quarter by the notification in the schedule to item 4 (v) (A) (iii) is within the powers conferred on the Government. The Government in exercise of its powers under Section 3 of A.P.Motor Vehicles Taxation Act issued the said impugned notification.

It is submitted that though the Motor Vehicles Taxation Act is in the nature of compensatory and regulatory in nature, to curb the misuse and illegal operations, higher rate of tax is prescribed treating the misused vehicles as a separate class. The power exercised by the Government is within the power conferred on it by the Statute. The petitioners have not challenged the specific demands against them but they have filed the writ petitions as a precautionary measure with an intention to ply their vehicles violating the conditions of the permit or to ply without permits evading the higher rate of tax. The higher rate of tax attracts only in the cases of misuse or plying the vehicles without a permit depending upon the class of the usage of the vehicle for which the vehicle is put to use. The explanations are the part of Statute/notifications as the case may be and will have full effect for applications, which authorizes the levy of higher rate of tax in case of misuse. Hence, the impugned amendments are not

arbitrary or unconstitutional.

The Legislature of State of Andhra Pradesh enacted A.P.Motor Vehicles Taxation Act, 1963 in exercise of its powers under Entries 56 and 57, List-ll of the VII Schedule of the Constitution of India.

Entry "56: Taxes on goods and passengers carried by road or on inland waterways."

Entry "57: Taxes on vehicles, whether mechanically propelled or not suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III".

List III is the Concurrent List and Entry 35 of VII Schedule empowers the State and also the Parliament to make law relating to the mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. Admittedly, the Parliament has not enacted any law relating to the taxation on motor vehicles. The taxes under Entries 56 and 57 is leviable by the State Legislature on all vehicles "suitable for use on roads", which are kept in the State as per the judgment of the Apex Court in TRAVANCORE TEA CO, Vs STATE OF KERALA ([5]).

> Para 6. If the words 'used or kept for use in the State' are construed as used or kept for use on the public roads of the State, the Act would be in conformity with the powers conferred on the State Legislature under Entry 57 of List II. If the vehicles are suitable for use on public roads, they are liable to be taxed. In order to levy a tax on vehicles used or kept for use on public roads of the State

5 AIR 1980 1547 (Para 6)

and at the same time to. avoid evasion of tax, the legislature has prescribed the procedure. Sub-sec. (2) of S.3 provides that the registered owner or any person having possession of or control of a motor vehicle of which a certificate of registration is current shall for the purpose of this Act be deemed to use or kept such vehicles for use in the State except during any period for which the Regional Transport Authority has certified in the prescribed manner that the motor vehicle has not been used or kept for use. Under this sub-section there is a presumption that a motor vehicle for which the certificate of registration is current shall be deemed to be used or kept for use in the State. This provision safeguards the revenue of the State by relieving it from the burden of proving that the vehicle was used or kept for use on the public roads of the State. At the same time, the interest of the bona fide owner is safeguarded by enabling him to claim and obtain a certificate of non-user from the prescribed authority. In order to enable the owner of the vehicle or the person who is in possession or being in control of the motor vehicle of which the certificate of registration is current to claim exemption from tax he should get a certificate in the prescribed manner from the Regional Transport Officer."

The relevant provisions under the Taxation Act are extracted below: **Section 3. Levy of tax on Motor Vehicles: -**

1. The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State.

2. The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied:

Provided that the rates of tax shall not exceed the maximum specified in Column (2) of the First Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in Column (1) thereof;

.....

.....

Section 4. Payment of tax and grant of **licence: .-**

(1) (a) The tax levied under this Act shall be paid in advance and in the manner specified in Section 11, by the registered owner of the motor vehicle or any other person having possessing or control thereof, at his choice, either quarterly, half-yearly or annually on a licence to be taken out by him for that , quarter, half-year or year, within fifteen days from commencement of the quarter, half-year or year, as

the case may be

(aa)....

(b) Where the tax for any motor vehicle has been paid for any quarter, half-year or year and the motor vehicle has not been used during the whole of that quarter, half-year or year or a continuous part thereof not being less than one month, a refund of the tax at such rates as may, from time to time, be notified by the Government, shall be payable subject to such conditions as may be specified in such notification, (bb).....

(2)

(3)(a) Where a tax in respect of a motor vehicle is paid by any person for a particular period or if no such tax is payable therefor, the licencing officer shall, -
(i) grant to such person a licence, in such form as may be notified by the Government, to use the motor vehicle in any public place in the State during the said period; and
(ii) record in the certificate of registration in respect of the motor vehicle for which such certificate is granted under the Motor Vehicles Act,

(4) Notwithstanding anything in Section 3 or sub-section (1), the Government may, by notification from time to time, direct that a temporary licence for a period not exceeding thirty days at a time may be issued in respect of a motor vehicle of any class on payment of such tax, and subject to such conditions as may be specified in such notification.

Under Section 5 of the Act, licence granted has to be displayed on the motor vehicle in the manner notified by the Government. Under Section 6, if the tax due in respect of any motor vehicle is not paid, the licencing authority is empowered to levy penalty double the tax payable. Under Section 8 of the Act, without prejudice to the provisions of Sections 6 and 7,the

vehicle is also liable to be seized and detained until the tax is paid.

As per the definition under Section 2 (h), Tax' means, the tax leviable under the Taxation Act and under Section 2 (j), words and expressions used under the Taxation Act shall have the meanings assigned to them in the Motor Vehicles Act.

The relevant portions of the First Schedule as amended from time to

time specifying the maximum rate of tax on the classes of motor vehicles issued under proviso to sub-section (2) of Section 3 read as follows:

First Schedule

(Proviso to sub-section (2) of Section 3)

–

	Classes of Motor Vehicles fitted with pneumatic Tyres	Maximum Quarterly tax
1.	(2)	Rs.
1	2.Invalid carriages 3.Goods carriages (a) to (k)..... 4. Motor Vehicles plying for hire and used for Transport of passengers in respect of which Permits have been issued under the Motor Vehicles Act, 1988.—	
	(')	
	(ii)	
	(iii Vehicles permitted to carry more than six passengers and paying as stage stage carriages on town service routes.— (a).... (b)....	
	(iv)Vehicles permitted to carry more than six passengers and plying as Stage carriages other than town service routes:	
	(a) in respect of the vehicles permitted to ply as 'Express Service' for every passenger (other than the driver and conductor) which the vehicle is permitted to carry.	4,000/- (as amended in G.O.Ms.No.53,
	(b)	
	(v) Vehicles permitted to carry more than six passengers and plying as contract carriages for every passenger (other than the driver and conductor) which the vehicle is permitted to carry, vi) Vehicles permitted to carry more than six passengers and plying as,--	4,000/-
	(a) Contract carriages on Inter-State routes on temporary permits under	4,000/-

sub-section (8) of Section 88 of the Motor Vehicles Act, 1988 and on Intra-State routes (within the State of Andhra Pradesh) for every passenger other than driver which the vehicle is permitted to carry.

(b) Contract carriages plying within the Home District and any one contiguous district for every passenger other than driver. 4,000/-

5

6

7....

8…

In exercise of powers conferred by Section 3 of the Taxation Act, the Governor of Andhra Pradesh issued notification in G.O.Ms.No.75, Tr,R & B, dated 27/04/1993 directing a tax for a quarter shall be levied on every motor vehicle used or kept for use in a public place in the State, at the rates specified in Column No.2 of the Schedule below in respect of the classes of the motor vehicles specified in Column No.1 thereof, as amended from time to time and by notification in G.O.Ms.No.152 Transport, Roads & Buildings, dated 01/12/2001 and by the impugned notification in G.O.Ms.No.77, Tr, R&B dated 01/06/2002.

SCHEDULE

Sl. No. Class of Motor Vehicle

Rate of quarterly tax for motor Motor vehicles fitted with pneumatic tyres

Rs.

1 ..... .

2..:..

3. Goods Vehicles 4.

(i).... (") .....

("0 .....

(iv). Vehicles permitted to carry more than six passengers

and plving as stage carriages on town service routes. —

(A) In respect of vehicles permitted to ply

822/-

as express services. for everv passenger other than the driver and conductor which the vehicle is permitted to carry.

330/-492/-

61 8/-660/-

(B) In respect of vehicles permitted to plv as Ordinarv services for everv passenger other than driver and conductor) which the vehicle is permitted to carrv and where the total distance permitted to be covered by the vehicle in a day:

(a) Does not exceed 100 Kms (b)exceeds 100 Kms but does not exceed

160 Kms. © exceeds 160 Kms but does not exceed

240 Kms.

(d)exceeds 240 Kms

(v). Vehicles permitted to carrv more than 6 passengers and plving as stage carriage on the routes other than town service routes. — .

1.092/-

(A) in respect of vehicles permitted to plv as express services. for everv passenger (other than the driver and conductor) which the vehicle is permitted to carrv and where the total distance is permitted to be covered bv the vehicle in a dav. (i) does not exceed 320 Kms. (ii) exceeds 320 Kms. but does not

exceed 1 ,000 Kms

(iii) exceeds" 1,000 Kms 3,500/-

(substituted bvG.O.Ms.No.77dt:1/6/2002) (B)In respect of vehicles permitted to plv as ordinarv services. for everv passenger (other than driver and conductor) which the vehicle is permitted to carrv and where the total distance permitted to be covered by the vehicle in a day.—

(a) Does not exceed 100 Kms. 414/-

(b)Exceeds 100 Kms, but does notexceed 160 Kms. 582/-

© Exceeds 160 Kms, but does not

exceeds 240 Kms 744/-

(d)Exceeds 240 Kms, but does not

exceed 320 Kms. 870/-

(e)Exceeds 320 Kms 948/-

Provided

Explanation-I: - The number of persons or passengers which a

vehicle is permitted to carry shall,™

(i) In the case of a motor vehicle in respect of which a permit is granted under Motor Vehicles Act, 1988, be the number of persons or passengers which the motor vehicle is authorized to carry by the permits; and

(ii) In the case of a motor vehicle plying for hire or reward without permit, granted under the Motor Vehicles Act, 1988, be the maximum number of persons or passengers which the vehicle may be permitted to carry, if a permit was granted under the aforesaid Act.

Provided that in the case of Max cab or motor cab or motorcar misused, as a stage carriage be the number of persons or passengers actually carried in the vehicle at the time of such misuse (substituted by impugned G. O. Ms. No. 77 dt:1/6/2002).

Explanation-II:-

(i)

(ii)....

Explanation-III:- The distance permitted to be covered by a vehicle

in a day shall,--

(i) in the case of a motor vehicle in respect of which a permit is

granted under the Motor Vehicles Act, 1988 be the distance

authorized to be covered according to the permits; and *(ii) in the case of a motor vehicle plying without* a *permit granted*

under Motor Vehicles Act, 1988 be reckoned, as above 1000

Kms applicable to express stage carriages.

(substituted by G.O.Ms.No.77 dated 01/06/2002).

Explanation-IV.....

Explanation-V:-Where a Conductor is exempted to be carried in a stage carriage for the words "other than the Driver and Conductor" occurring in Items (iv) and (v) shall be construed as other than Driver only.

(After Explanation-V, the following Explanation-VI is added by impugned G.O.Ms.No.77 dated 01/06/2002):

Explanation-VI:- . '

(i)

(ii)....

(iii)

(iv)Where contract carriages covered by Inter-State, Statewide, District-wide permits and idle contract carriages are misused as stage carriages, tax at the rate of Rs.3,500/- per seat per quarter shall be leviable.

4. (vi) (A)Vehicles permitted to carry more than six persons and plying as contract carriages covered by All India Tourist Permit issued Section 88 (9) of the Motor Vehicles Act, 1988 for every passenger other than the Driver and Conductor/Attendant which the vehicle is permitted to carry Rs.3,500/-

(B)Vehicles permitted to carry more than six passengers plying as contract carriages on Intra-State routes for every passenger (other than driver) Rs.2,500/- which the vehicle is permitted to carry. © Contract carriages plying within the Home District and any one continuous district for every passenger (other than driver) Rs.1,150/-

(D)Idle contract carriages not covered by any permit plying on the strength of temporary/special permits issued under Section 87 or sub-section (8) of Section 88 of A.P.Motor Vehicles Act, 1988. Rs. 850/-

(E)

5

6

7

8 ...

Under Rule 4 of the Motor Vehicles Taxation Rules, 1963, every registered owner or person having possession or control of a motor vehicle used or kept for use in the State, shall file a declaration with the licencing authority for the payment of the tax in advance by such user of

the vehicle and obtain a licence from the licencing authority. If the class of the motor vehicle is altered, he shall also file a declaration in respect of the altered class of vehicle under Rule 5. Under Rule 12, if the tax due in respect of any motor vehicle has not been paid as specified in Section 4 of the Taxation Act, the owner of the vehicle is not only liable for the arrears of the tax, but also penalty. Under Rule 12-A, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control thereof intimates in writing to the licencing officer before the commencement of the quarter for

which the tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid. Under Rule 13-A of the Rules, the tax shall be-paid and proof of the payment of the tax shall be produced together with the Registration Certificate before the licencing authority who shall record the fact of payment of the tax in the Registration of Certificate and also issue the licence.

It is clear from the reading of Sections 3 and 4 of the Taxation Act, the rules made thereunder and the notification issued in G.O.Ms.No.75 dated 27/04/1993 amended from time to time prescribing the quarterly tax leviable on motor vehicles not exceeding maximum tax prescribed in the First Schedule shall be levied on every motor vehicle used or kept for use in a public place in the State based on its usage as classified under the Act and the schedule of the Taxation Act. The classes of the motor vehicles under the schedule are:

1. Motor Cycle (Motor Scooters), Tri-Cycles
2. Invalid carriages
3. Goods vehicles which are sub-classified depending upon the laden weight

4. Motor vehicles plying for hire, and used for transport of the passengers in which there are several sub-classifications such as, stage carriages on the town service routes (express and ordinary) depending upon the distance of the route, stage carriages on the routes other than the town services (express and ordinary) depending upon the distance of the permitted route and contract carriages covered by All India Tourist permits, contract carriage on Inter-State routes, State-wide contract carriages and contract carriages plying in the Home District and any one contiguous district.

(5)

(6) Fire Engines etc.

7. Omnibus with the seating capacity of more than six.

8. ....

Under Section 2 (j) of the Taxation Act, the words and expressions used but not defined in the Taxation Act shall have the meanings assigned in the Motor Vehicles Act. Therefore, the relevant provisions of the Act are required to be noticed for the purpose of taxation in respect of the usage or classification of the vehicles. As per Section 2 (4) "Registration Certificate" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter-IV. Chapter-IV deals with the registration of the motor vehicles. As per Section 2 (7), "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, or the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum.—

a. on a time basis, whether or not with reference any route or distance; or

b. from one point to another,

and in either case, *without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—*

(i)a max/cab; *and*

(ii)a motorcab notwithstanding that separate fares are charged for its passengers;

As per Section 2 (14), "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. As per Section 2 (17), "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms. As per Section 2 (18) "invalid carriages" means a motor vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person. As per Section 2 (22), "maxicab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward. As per Section 2 (24), "medium passenger motor vehicle" means any public service vehicle or private service vehicle, or educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle. As per Section 2 (28), "motor, vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes..... As per Section 2

(29), "Omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

As per Section 2 (31), "permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle. As per Section 2 (33), "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons.... As per Section 2 (34), "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any 'place or stand at which passengers are picked up or set down by a stage carriage. As per Section 2 (35), "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage. As per Section 2 (38), "route" means a line of travel, which specifies the highway, which may be traversed by a motor vehicle between one terminus and another. As per Section 2 (40), "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. As per Section 2 (43), "tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf. As per Section 2 (47), "transport vehicle" means a public service

vehicle, a goods carriage, an educational institution bus or a private service vehicle.

Under Section 39 of the Act, no vehicle shall be permitted to be

driven in any public place unless the vehicle is registered in accordance with the Chapter IV of the Act and the Registration Certificate of the vehicle is obtained. No vehicle shall be permitted to be altered without permission of the .registering authority under Section 52 of the Act. The authorities are empowered under Section 53 of the Act to suspend the registration of any motor vehicle if such vehicle has been, or is being used for hire or reward without a valid permit. Sections 54 and 55 deal with suspension and cancellation of the registration. Chapter-V of the Act deals with the control of the transport vehicles. Under Section 66 of the Act, no owner of the motor vehicle shall use or permit to use the vehicle as transport vehicle in any public place whether or not such vehicle is actually, carrying any passenger or goods save in accordance with the conditions of the permit granted. Different types of the permits such as, contract carriages, stage carriages, goods carriages etc., are contemplated for the use of the vehicle. Sections 70, 71 and 72 of the Act deal with the manner and the method of obtaining the stage carriages permits subject to the conditions that may be imposed under Section 72 (2) of the Act specifying that the vehicle shall be used in a specified area on a specified route or routes, number

of trips, time table, number of passengers to be carried, rate of charges that may be levied for passengers etc. Sections 73 and 74 deal with the manner and the method of obtaining contract carriage permits subject to the conditions mentioned in Section 74 (2). Sections 80 and 81 deal with the procedure, grant, duration and renewal of permits. Section 84 deals with the general conditions attaching to all permits complying with the requirements of the Act and the Rules made thereunder. Section 86 deals with the cancellation and suspension of the permits on the breach of any

conditions mentioned in the permit for misuse of the permit etc. Section 87 deals with the temporary permits not exceeding 4 months authorizing to use the transport vehicle temporarily for conveyance of the passengers on special occasions etc. Section 88 (8) deals with the grant of special permits to the public service vehicles to carry passengers on contract basis within the region and outside the region i.e., inter-state and intra-state contract carriage permits. Section 88 (9) deals with the grant of permits in respect of tourist vehicles (All India permits). Chapter XIII deals with the offences, penalties and procedure. Under Section 192 and 192-A of the Act, if any vehicle is used without any registration, permit, and for contravention of the conditions of the permit holders thereof are liable to be punished. Certain offences committed under the Act are compoundable. Under Section 207 of the Act, the police officers and the officers under

the Act are empowered to seize the certificate of registration or seize and detain the motor vehicles plying without registration or permit or for contravention of any conditions of such permit.

In exercise of powers vested under the relevant sections of the Act, the Central Government framed rules called the Central Motor Vehicles Rules 1989 and also the State Government made rules called the A.P.Motor Vehicles Rules 1989 (hereinafter referred to as 'Rules'). Rule 2 (b') defines "express stage carriage" which means (i) a carriage plying on City and town routes; "non-stop" or "with limited halts" as may be prescribed by the transport authority; or (ii) a carriage plying non-stop on mofusil routes of short distance as may be prescribed by the transport authority; or (iii) a carriage plying on mofusil routes with limited halts as

may be prescribed by the transport authority. Rule 2 (i) "passenger", means any person traveling in public service vehicles other than the driver or conductor or any employee of the permit holder while on duty. Rule 2 (k) "road length" means actual distance of any route as a physical track. Under Rule *185* (1) (a), the vehicles shall not be used in any public road unless the tax due in respect of such vehicle has been paid in accordance with the provisions of the Taxation Act and the notification issued thereunder. Apart from that, several conditions for the respective class of vehicles such as; contract carriages and stage carriages are attached to the permits.

A Division Bench of this Court in the case of sunkara **VENKATESWARA R A O V . JOINT REGIONAL TRANSPORT** COMMISSIONER (KRISHNA) ([6]) held that levy of the tax on the vehicles found to have been used casually in the quarter as stage carriage although tax was paid on the basis of the contract carriage is valid. The vehicle is liable to be taxed on the basis of its usage apart from action contemplated under the Motor Vehicles Act for the violation of the conditions of the permit. But having held so, a further view was taken holding that the contract carriage permit holders paid the quarterly tax and misused as stage carriage during the quarter, the differential tax as stage carriage was to be calculated from the date of misuse to the end of the quarter. This further view is not agreed by the Full Bench in Y.PEDA VENKAIAH's case (1 supra), but upheld the said decision in so far as the collection of the tax on the usage of the vehicle is concerned. The Full Bench while considering the similar contentions that once the vehicle was registered as a contract carriage and the tax is paid on that footing for violation of any conditions of a contract carriage permit, action can be taken under the Act alone but not under the

Taxation Act even it is used as a stage carriage and there is

nothing in the Taxation Act authorizes a further levy of the tax as a stage carriage.

The said submission was held as misconception in view of Section 3 of the Act, which authorizes

the Government to levy tax on every motor vehicle used or kept for use in a public place in the State by means of a notification under that Section. Section 3 (2) provides that the notification shall specify the class of motor vehicles on which the rates for the period at which and the date from which the tax shall be levied. Different rates of tax on the different classes of vehicles has been fixed. Under Section 4 of the Taxation Act, tax shall be paid in advance based on the classification to which motor vehicle is used. In Para 12 it was held that:

> " if, therefore, at the beginning of the
>
> quarter, the vehicle belongs to a particular class referred to in that notification tax is levied on that footing and an entry is also made in the Certificate of Registration to that effect. But it does not follow that if the class of vehicle is changed during the quarter by reason of the use it was put to tax cannot be levied according to the class to which the . vehicle then belongs. As soon as the class of vehicle is changed, the rate of tax which applies to that class according to the notification is automatically attracted. There is no need for the Act to provide specifically that if there is a change in the class of vehicle, the authorities can levy tax afresh on that vehicle as belonging to that

class. The power contained in Section 3 read with Section 4 is sufficient to enable the Government to levy the tax from time to time when the class of the vehicle is changed.

It was further held that:

" the same view was expressed earlier by

the Supreme Court in Gursahai **Saigal Vs.**

Commissioner of Income-tax (1963) 48 ITR (SC) 1 (AIR 1963 SC 1062). In this case all that can be said is that there is no special

machinery prescribed for levying tax at a different rate when the class of vehicle is changed, once particular tax 'has been levied on the vehicle at the beginning of the quarter according to the class to which it belongs on that day. In such a case, having come to the conclusion that under the charging section namely S.3 there is power to levy a different tax when the class of a vehicle is changed, we have to construe the provisions of the Act as providing sufficient machinery to levy such a tax. In this case when it is found that a vehicle is being used as a stage carriage, notice is given to the person concerned as to why it should not be treated as a stage carriage for the purpose of taxation and after hearing the aggrieved party the licensing officer comes to that conclusion that it is used as a stage carriage and accordingly levies the tax on that footing. In our view, such a procedure is perfectly justified for levying the tax, which the Government is entitled to levy under the charging section."

The change of the class of the vehicle depends upon the usage of the vehicle by the owner and as and when the vehicle is used as a contract carriage, it becomes a contract carriage and if contract carriage is used as a stage carriage its class automatically changes as a stage carriage and the tax automatically attracts for the class of the vehicle for which it is used.

The said view was also confirmed by the latter Full Bench

Of this Court in **V.GOVINDARAJULU V. THE REGIONAL**

TRANSPORT OFFICER (2 supra) while considering the similar contentions of the petitioners therein that once a vehicle was registered as contract carriage and the tax was paid on the footing that there is no provision in the Act which enables the authorities to levy tax again on the vehicle as a stage carriage if

it is found to have been used as a stage carriage and that the

petitioners may be liable for action under the provisions of the Motor Vehicles Act for contravention of the conditions of the permit of a contract carriage. The Full Bench further held that the tax levied on the basis of the use of the transport vehicle and not on the nature of the permit held by the owner in respect of the vehicle and the power contained in Section 3 read with Section 4 of the Taxation Act is sufficient to enable the State Government to levy tax from time to time. When the nature of the usage of the vehicle is changed to another class, then the motor vehicle is liable to tax on its altered class and there is no prohibition in the Act for the levy of the collection of the tax as authorizes under Section 3 (1) of the Taxation Act, in cases where action is taken for the breach of any of the conditions of the permit against the holder of the permit under Section 60 of the old Act (Section 86 of the new Act, 1988). The two actions are different - one for the user of the vehicle and the other for the breach of the conditions of the permit.

It is settled proposition that in interpreting a taxing Statute, equitable considerations are entirely out of place. Nor can taxing Statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words, the Statute and interpret them. It must interpret a

taxing Statute in the light of what is clearly expressed: it cannot imply anything, which is not expressed; it cannot import provisions in the Statutes so as to supply any assumed deficiency. It is stated that the notification issued under Section 3 in G.O.Ms.No,75 dated 27/04/1993 amending the Schedule from time to time, the prescription of the tax on different classes of the vehicles is in tune with the main Act and the notification issued in the Schedule and the explanation which is a self-contained provision and one has to read the Schedule as a whole including the explanation and their meaning being simple and plane in attracting the tax based on the usage of the vehicle and the said usage falls in whichever classification the tax automatically attracts for that particular class.

The petitioners relied on a decision of the Division Bench of Rajasthan High Court in inder kumar goyal v. state of RAJASTHAN ([7]), wherein the petitioners challenged the vires of Section 4B(3) providing imposition of further special road tax at the rate of 100% per seat per trip in addition to the tax payable under Section 4B(1) under which the tax is levied on motor vehicles used or kept for use in the State apart from the surcharge at the rate of 10% of the tax is imposed under Section 4(3). Special road tax can only be levied on all transport and non-transport vehicles in addition to tax and surcharge. Section 4B(2) indicates that rate of special road tax depends on the distance required to be covered during the month as per the time table fixed or as per the scope fixed for

[7] AIR 1992 RAJ. 181

the route by the Regional Transport Officer under the Act. Thus, the transport or non-transport vehicles are liable to pay tax, surcharge and the

special road tax under Section 4, 4A and 4B (1) and in addition to that, an additional special road tax is contemplated under Section 4B (3). Section 4B(3) in imposing additional tax with reference to. the user of the vehicle on the road, it was not a tax on the road or on the vehicle or passenger but it was an additional special road tax imposed for vehicles plying without a licence or in contravention of the conditions of the licence or permit. The question that arose for consideration was whether a tax, additional tax or special tax can be imposed for an act which is offence under a provision contained in the Motor Vehicles Act. A Division Bench of Rajasthan High Court held that Section 4B(3) was not the imposition of the tax, but a fine or penalty for an alleged offence of plying the vehicle without a valid permit or in contravention of the conditions of permit. Such a penalty cannot be treated as a part of regulatory or compensatory tax and in those circumstances, Section 4B(3) held beyond the legislative competence of the State Legislature and- declared as unconstitutional. Neither the provisions nor the facts of the said case are relevant nor similar to the A.P.Taxation Act or the facts in question. A Civil Appeal No. 10457 of 1995 was filed before the Supreme Court against the said judgment which was dismissed on 15/04/1998 without deciding the question

"whether the imposition under Section 4B(3) is not a tax but a penalty and is ultra vires the legislative powers of the State legislature under Entry 56 and Entry 57 of List II" leaving it open as Section 4B(3) was repealed.

The contention of the petitioners is that the judgments of the aforesaid two Full Benches are no longer good law in view of the judgment of the Apex Court in M.NARASIMHAiAH's case (3 supra). Admittedly, the said case arose under Karanataka Motor Vehicles

Taxation Act. In addition to the Schedule to levy of tax used as contract carriages, State of Karnataka amended and levied additional tax under Section 8. Section 8 relates to the payment of additional tax.

> Section 8. when any motor vehicle in respect of which a tax has been paid is altered or proposed to be used in such manner as to cause vehicle to become a vehicle in respect of which a higher rate of tax is payable, the registered owner or a person, who is in possession or control of such vehicle, shall pay an additional tax or a sum which is equal to difference between the tax already paid and the tax which is payable in respect of such vehicle for the period for which the higher rate of tax is payable in consequence of its being altered or so proposed to be used and the taxation authorities shall not grant a fresh taxation and in respect of such vehicle so altered or proposed to be so used until such an amount of tax is paid.

In the said case, neither the usage of the vehicle was changed nor it was altered. The only allegation in the said case was that on two occasions, the passengers were carried in excess of number of which he was allowed to carry under the permit and,

therefore, the additional tax was proposed. The Apex Court held that the vehicle in question has not been altered and the vehicle has been used only as a stage carriage for which the stage carriage permit was granted and there was no provision to tax higher rate of tax for carrying the extra passengers in a stage carriage. Section 8 empowers to collect the additional tax when the vehicle was altered or proposed to be used and such a vehicle attracts higher rate of tax authorizing for collection of differential tax. Merely because stage carriage is carried excess number of passengers, it cannot be said that its class is changed from stage carriage. The Apex Court also held that in stray cases of overloading, an

additional tax under Section 8 cannot be levied. An additional tax is payable when the vehicle is altered attracting higher rate of tax. Accordingly, the Apex Court held that when the registered owner of a motor vehicle is permitted to use as stage carriage, he cannot be asked to pay an additional tax under Section 8 of the Act merely because he has carried, on some occasions, more passengers than the maximum number of persons that he is permitted to carry under the permit. The tax, which is liable to pay, is limited by the maximum number of passengers, he is entitled to carry under the permit. I am of the opinion that the law laid down by the Apex Court in M.NARASIMHAIAH's case (3 supra) is in no way overruled the decision of the aforesaid two Full Benches of this Court.

Even the subsequent Full Bench of this Court in **k.rama RAO's case** (4 supra) has not taken a different view from that of the earlier two Full Benches. The facts in the case of K.RAMA **RAO's** are that the petitioners therein were having stage carriage permits on the town service routes. Admittedly, the vehicle in question therein was plying within the town service limits only. The deviation, if any, was within the town service limits and, therefore, levy of the tax on the different classification applicable to mofussil service routes was held to be illegal as the classification was not changed. Undisputably, the vehicle of the petitioner in the said case plied in the town service route and the deviation was within the town service but the tax that was levied at the maximum rate applicable to stage carriages of mofussil services, and therefore, in Para 9, the Full Bench held that the scheme, purport and object of the Act clearly suggests that the levy can be only on the basis of Class of motor vehicles as indicated in the schedule referred to in the notification. In Para 11 of the said judgment, it was held that it is not in dispute that the vehicle of the petitioner was having a town

service stage carriage permit. Only because a deviation has been made in the route for a day for one reason or the other would not make the vehicle as having plied without any permit whatsoever. Therefore, the extra tax cannot be levied for the violation of the condition of the permit. At the end of Para 13, it was held that the liability to pay the maximum rate of

tax attaches itself to the vehicle the moment it plies on a route other than the one authorized by the permit or without obtaining any permit at all. The mere fact that the vehicle deviated from the permitted route which is within the town service, it cannot empower the taxation authority to levy any tax treating it as a mofussil route or other route other than the town service. It was not in controversy the route on which or over which the petitioners are holding the permit having determined as town service route and the taxation authorities therefore will have to levy tax only treating them as town services so long as the determination subsists. Therefore, it cannot be said that by the aforesaid judgment of the Apex Court in M-NARASiMHAiAH's case (3 supra) and by the latter Full Bench of this Court in K.RAMARAO's case (4 supra), the law laid down by earlier two Full Benches (1 and 2 supra) of this Court are no longer good law.

A.P. Motor Vehicles Taxation Act is a law made pursuant to the power given to the State Legislature by Entries 56 and 57 of List II of VII Schedule. 'Entry 57 of List-ll empowers the Legislature in respect of tax on vehicles suitable for use on roads. The power exercisable in Entry 57 is the power to impose tax, which is in the nature of the compensatory and regulatory measure.

A Bench consisting of three Hon'ble Judges of the Apex Court in

STATE OF KARNATAKA V. D.P.SHARWiA ([8]) held that if the basis of the classification has some rationale relation to the purpose of the Act imposing it, that would be sufficient to satisfy the requirement of the Article 14. The Court applies a spectrum of standard in reviewing the discrimination violative of Article 14. That spectrum comprehends variation in the degree of care with which the Court will scrutinize particular classification and that in the context of economic and tax matters, a classification made by the legislature is almost always sustained because the Court lacks both the expertise and the familiarity with the local problem so necessary for making a wise decision, with respect to raising and disposing public revenues. In the said case, the Apex Court refused to upset the classification made by the legislature based on its knowledge and information.

The Supreme Court in state of karnataka v. N.MADAPPA ([9]) held that the power to levy tax is on the basis of user of the vehicle. But the levy of the tax at the enhanced rate on the excess passengers on the finding that the vehicle to be overloaded in excess of the prescribed limit and imposing an additional tax under Section 8 is not legal. In the said case also classification of the vehicle was not changed from the nature of

[8] AIR 1975 SC 594

[9] (1996) 9 SCC 284

its use which view is similar to that of P.NARASIMHAIAH's case (3 supra).

In the case of STATE OF KERALA V. ARAVIND RAMAKANT MODAWDAKAR ([10]) when the rate of tax was reduced in respect of the contract carriages plying within the State, then the inter-State carriage permit holders questioned the said action in not reducing the similar tax to the Inter-state contract carriages permits as discriminatory. It was the contention that certain routes within the State from one end to the other end are more than the length of inter-state contract carriage permits. A learned single Judge of the Kerala High Court refused to accept the contention of the petitioners to reduce the tax in respect of the contract carriages covered by inter-state permits and held that a classification imposing the tax, on the intra-state and inter-state permits is a reasonable classification for the purpose of levy of tax. On appeal, the Division Bench of the Kerala High held that such a classification has no nexus with the object of the tax. The State carried the matter to the Apex Court and the Apex Court held that the classification is based on well defined, intelligible differentia, which is a reasonable and wouid not offend Article 14 of the Constitution. An argument was advanced before their Lordships that the legislature has ample power under the Act if it so choose to tax a particular class of vehicle differently from another class of vehicle and the courts

[10] AIR 1999 SC 2970

cannot review these decisions if there is no abuse of its powers and transgression of the legislative function. The Supreme Court held that it is alsb a settled proposition in law that the actual user of the road by the vehicles which are covered by the requisite permits is always a relevant

factor since the taxable event under Section 3 (1) of the Act occurs when the vehicle is used or is kept for use in the State. It is further held that the Court should bear in mind that the State has wide discretion in selecting the persons or objects it will tax and thus a Statute is not open to attack on the ground that it taxes some persons or the objects and not others. It is also well settled that a very wide latitude is available to the Legislature in the matter of classification of objects, persons and things for the purpose of taxation. The argument of long or short usage of road is purely hypothetical and would not be a sole guideline to test the validity of a taxing Statute; even if such Statute is a compensatory/regulatory taxation. The tax levied under the legislative power found in Entry 56 or 57 of List II of VII Schedule is primarily a tax, though it may be compensatory and/or regulatory in nature and, therefore, while testing the constitutional validity of taxing Statute it may not be safe to rely upon the hypothetical factors as against the wisdom of the. legislature. The area of judicial review is considerably limited in testing the validity of a taxing Statute.

Section 3 (1) of the Taxation Act is the charging section where the State has power to levy tax on the vehicles used or put to use by issuing necessary classification in the Schedule. Section 3 gives power to specify the class of the motor vehicle and the quantum of tax to be levied, which will, however, shall not be more than the amount prescribed under the First Schedule. By virtue of the impugned notification, a new slab was inserted in item 4 (v)(A)(iii) wherein the tax at the rate of Rs.3,500/- is prescribed to the vehicles of express stage carriages which exceed 1,000 Kms per day. The maximum tax limit prescribed for stage carriages under the First Schedule is Rs.4,000/- per seat per quarter. Likewise, for the contract carriages, maximum tax prescribed under the First Schedule is

Rs.4,000/-. Merely because no one has applied and obtained the permits in respect of stage carriages for a total distance exceeding 1,000 Kms in a day, it cannot be said that the slab introduced only by way of penalty in respect of the vehicles mentioned in Explanation-VI (iv) of the impugned notification. The notification issued under Section 3 of the Taxation Act, is in consonance with the Schedule and the classifications are classified on the basis of usage of the vehicles and not on the basis of the permit. Therefore, I am of the opinion that the law laid down by the earlier two Full Benches of this Court have not been changed or overruled in any manner either by the latter Full Bench of this Court in K.RAMA RAO's case (4 supra) or by

the Apex Court in M.NARASIMHAIAH's case (3 supra). I agree with the said principles laid down by the earlier two Full Benches (1st and 2nd cited supra). If the imposition of the tax is not based on the usage of the vehicle as classified in the Schedule of the notification and if the tax is based on the permit issued permitting to carry the passengers for the stage carriages or contract carriages or in the town service routes, the whole of the notification becomes unworkable. The law laid down by the first Full Bench in 1977 has been worked out for quite a long time and it never discriminated or prejudiced the interest of a particular class of the transporters. Within the town services, there are express town services and the ordinary town services permitted to ply in a day depending upon the length of the route. In the case of an ordinary service in a town service route, if the vehicle is plying not exceeding 100 Kms in a day,

the tax is Rs.330/- per passenger per quarter and if it exceeds 240 Kms, it

will be Rs.660/-. If an ordinary town service permit holder plies on a mofussil service route, it cannot be said that the class of vehicle is not changed. Even in respect of the stage carriage on the routes other than the town service, there are sub-classifications. Sub-classifications are there from 1993 onwards. The tax payable by the contract carriage permit holders plying within the home district and any one contiguous district, for every passenger per quarter is only Rs.1,150/-. If that vehicle plies as a stage carriage on the classification

exceeding 1,000 Kms, it cannot be said that the class of the vehicle has not been changed. Therefore, I am of the opinion that the tax is leviable based on the usage of the vehicle but not on the actual permit. The tax will automatically attract as per the usage of the vehicle. By the impugned amendment only a sub-classification is made in respect of the contract carriages

used as a stage carriage. A stage carriage is a class by itself. Therefore, it cannot be said that the said classification is not authorized either under the Act or the Taxation Act or the rules made thereunder.

The Motor Vehicles Act, 1988 was enacted • by the Parliament in exercise of its powers under Entry 35, List III of VII Schedule of the Constitution. Admittedly, the Parliament has not included the principles on which taxes on such vehicles are to be levied in the said Act. Therefore, each State made separate enactments as regards the principles on which the tax on such motor vehicles are to be levied. The Motor Vehicles Act, 1988 and the Taxation Act have always been supplementary or interconnected. The Taxation Act borrows the definition of the relevant

types or classes of the vehicles for which they are put to use. The State legislature is empowered to impose tax on the vehicles which are suitable for use on public place depending upon the usage of the vehicle. Therefore, the two enactments are not enacted in the same field and they operate in different fields. Different kinds of

permits granted under the Act are intrinsically connected with the taxation Act.

Different actions are contemplated under both the Acts. If a motor vehicle plies in a public place without registration and without permit, the holder or user of such vehicle is liable to be punished under Section 192 for using the vehicle without registration and also liable to pay tax and penalty as per its usage in whichever class it falls in the notification issued under the schedule of the Taxation Act. Similarly, if a motor vehicle is used without any permit or allows to be used in contravention of the permit for which it was permitted to use, the holder of such vehicle is liable for punishment under Section 192-A of the Act apart from the tax liability on the usage of such vehicle in the public place. Therefore, it cannot be said that merely because an action has been taken under Section 192 or 192-A of the Act for plying the vehicle either without registration or without permit or misuse of the permit, as the case may be, the differential tax cannot be levied for the user of the vehicle for such class. What is amended by the impugned notification is only expanded the sub-classification of express stage carriage plying beyond 1,000 Kms. Already there are sub-classifications under the class of express stage carriages on the routes other than town service routes permitted to cover for a particular distance. It cannot be said that levy of tax on such class of vehicles is not a tax but a

penalty or punishment. The said

classification is no way violative of the provisions of the Act or covers the same area or similar actions under any of the provisions of the Act. Under the Taxation Act, tax has to be paid in advance by such user and, therefore, plying of a vehicle having a contract carriage permit used as a stage carriage, such motor vehicle which was plying without permit as a stage carriage be reckoned as above 1000 Kms applicable to express stage carriages and the tax payable thereon automatically attracts for such vehicle. Therefore, the impugned notification is valid and falls within the competence of the State legislation. The impugned notification is neither identical to any of the provisions of the Central Act nor inconsistent with the law of the Union and, therefore, it is valid. The actions contemplated under Section 192 or 192-A are different and distinct from that of the imposition of the tax on the usage of the vehicle in which class it fails.

Therefore, I am of the opinion that the earlier two Full Bench judgments of this Court (1st and 2nd cited supra), still operate as a good law and the impugned notification is not ultra vires of the Taxation Act or the rules made thereunder or unconstitutional. The Writ Petitions are devoid of any merit and they are accordingly dismissed, however, without any costs.

THE HON'BLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA

THE HON'BLE DR. JUSTICE MOTILAL B. NAIK

THE HON'BLE SRI JUSTICE V. ESWARAIAH

THE HON'BLE SRI JUSTICE G. ROHINI

AND

THE HON'BLE SRI JUSTICE DALAVA SUBRAHMANYAM

WRIT PETITION Nos.11463, 11464, 11899, 12072, 12073, 12074, 12077, 12085, 12089, 12095, 12171, 12190, 12222, 12256, 12295, 12356, 12397, 12437, 12505, 12515, 12516JJ, 12589, 12394, 12939, 13060, 13109, 13168, 13169, 13265, 13272, 13383, 13526, 13527, 13621, 13630, 13983, 14084, 14113, 14270, 14422, 14616, 14734, 14776, 15034, 15872, 16085, 16847, 16937, 17052, 17054, 17149, 17548, 17568, 17780, 18159, 18432, 18715, 18719, 19107, 19114, 19303, 19510, 19768, 20118, 20222, 20437, 20947, 23010, 23087, 23141, 23607, 25596 OF 2002, W.P.Nos.280, 337, 723, 1130, 1393 and 1403 OF 2003

JUDGMENT:

In view of the majority opinion, Writ Petitions are allowed by declaring Para (1)(iii), Para (3) and explanation VI (iv) of Para 5 of G.O.Ms.No.77, Transport, Roads & Buildings (TR.II) Department, dated: 1.6.2002 to be invalid. No costs.